

VENEZUELA

TRADE SUMMARY

In 2000, the U.S. trade deficit with Venezuela was \$13.1 billion, an increase of \$7.2 billion from the U.S. trade deficit of \$5.9 billion in 1999. U.S. merchandise exports to Venezuela were approximately \$5.6 billion, an increase of \$179 million (3.3 percent) from the level of U.S. exports to Venezuela in 1999. Venezuela was the United States' 25th largest export market in 2000. U.S. imports from Venezuela were about \$18.6 billion in 2000, an increase of \$7.4 billion (65.5 percent) from the level of imports in 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were \$3.3 billion in 1999, and U.S. imports were \$718 million. Sales of services in Venezuela by majority U.S.-owned affiliates were \$2.9 billion in 1998, while sales of services in the United States by majority Venezuela-owned firms were \$185 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1999 was \$6.75 billion, an increase of 17.8 percent from the level of U.S. FDI in 1998. U.S. FDI in Venezuela is concentrated largely in the petroleum, manufacturing and finance sectors.

IMPORT POLICIES

Tariffs

Venezuela is a member of several trade agreements with other countries in Latin America and the Caribbean. In 1993, Venezuela signed a partial Free Trade Agreement with Chile. Four years later, this agreement was extended to include all goods traded between the two countries. In 1995, Venezuela joined with Colombia and Mexico to sign a Free Trade Agreement (the "G-3 Agreement"). Under terms of this accord, the G-3 countries intended to eliminate almost all tariffs on trade by 2004.

Venezuela also has a preferential trade agreement with the Caribbean Common Market (CARICOM) that covers a variety of agricultural and textile products. In addition, Venezuela, jointly with Colombia, signed a framework agreement on free trade with several Central American countries in 1994, but the signatories have not yet negotiated schedules on tariff reduction and trade liberalization. Venezuela is also currently negotiating a free trade agreement with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements at the regional level put U.S. exports to Venezuela at a competitive disadvantage. For instance, Venezuela imposes a 20 percent ad valorem duty on imports of U.S. beer, wines and distilled spirits, while imports of the same goods from Argentina, Chile, and Mexico are subject to far lower duties. Under the G-3 Agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004. Venezuela also imposes a 15 percent duty on imports from the United States of undenatured ethyl alcohol and other compounds

used in the production of spirits. U.S. industry estimates that reducing the tariff on U.S. spirits could increase U.S. exports by some \$10 million.

The Andean Community common external tariff is used to determine tariffs for most agricultural imports. The Andean Community tariff on soybeans and its byproducts is variable, but usually is 15 percent. Soybean oil from Paraguay, Argentina and Brazil is subject to lower duties of one, eight or 10 percent, respectively, because of trade preference agreements. Soybean meal from Paraguay is subject to a 3.75 percent tariff, a rate that is "negotiated" annually. U.S. industry estimates that eliminating the preferences could increase U.S. exports by up to \$100 million.

Similarly, Venezuela imposes a 15 percent duty on fresh and dried fruit from the United States. All fresh and dried fruit from Chile and the Andean Community enter Venezuela duty free. Elimination of these preferences could increase U.S. exports by as much as \$10 million, according to U.S. industry estimates.

Non-tariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. No other quantitative import restrictions exist for industrial products.

As of January 2001, the Venezuelan Government is considering a procedural change to its customs regime that would have a significant impact on U.S. imports. Under this proposal, the Venezuelan government would require pre-shipment inspection of all imports. This proposal has the potential to cause delays, and may provide the Venezuelan Government with a means to restrict certain imports. The inspection services will be allowed to charge between 0.5 and 1 percent of the value of the shipment. This fee is to be paid by the importer. The Venezuelan Government claims that the program will comply with WTO requirements. Article VIII of the GATT, however, states that customs charges must be based on the cost of the service, not the value of the import.

Agricultural Import Licenses

In 1997, the Ministry of Production and Commerce implemented a yellow corn import licensing system, ostensibly to administer its WTO tariff-rate quota for sorghum and yellow corn. However, this measure also had the effect of enforcing "absorption" requirements for domestic sorghum. Under this system, feed manufacturers must purchase a government-assigned amount of domestic sorghum at the official (i.e., higher than world market) price in order to obtain import licenses for yellow corn. The Venezuelan Government officially denies using/enforcing any absorption requirement. Such "mixing requirements" appear to violate Article III of the GATT, and Venezuela had provided assurances that all such measures were eliminated in the context of its accession to the GATT in 1990.

There have been several instances of the Venezuelan Government using sanitary and phytosanitary barriers to unjustifiably impede imports (e.g., poultry, eggs, fruit and seeds) citing the danger of introducing exotic diseases and pests. For example, the Ministry imposed a ban on the import of onions, potatoes and forage seeds from the

U.S. in late 1998.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports relative to domestic products. Venezuelan Commission for Industrial Standards (COVENIN) requires certification from independent laboratories located in Venezuela.

GOVERNMENT PROCUREMENT

Venezuela passed a new government procurement law that came into effect on November 1, 1999. The law increases transparency in the competitive bidding process for contracts offered by the central government, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. Technically, the law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process "under exceptional circumstances" or in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include margins of preference in price; contracts reserved for nationals; other requirements in areas of domestic content, technology transfer and the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system. Exporters can get a rebate of the 15.5 percent wholesale tax paid on imported inputs. Foreign as well as domestic companies are eligible for these drawback privileges. U.S. firms located in Venezuela complain of long delays in receiving rebates, but the problem appears non-discriminatory since Venezuelan firms also complain of the same problem. Exporters of selected agricultural products - coffee, cocoa, some fruits and certain seafood products - receive a tax credit equal to 10 percent of the export's value.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Venezuela does not yet provide adequate protection for intellectual property. There is still widespread counterfeiting of products with well-known trademarks, as well as piracy of videos, satellite signals and other protected works. Moreover, the Venezuelan court system is an unreliable venue for pursuing claims concerning intellectual property infringement. Because of these deficiencies, Venezuela has been on the "Watch List" under the Special 301 provision of the 1974 Trade Act, as amended, since 1989.

The government created a new Intellectual Property Office (SAPI) in March 1997. SAPI

became operational in May 1998, and made a promising start in fighting trademark counterfeiting. Under SAPI, the government expanded the mandate of a special anti-piracy police unit (COMANPI) to include the enforcement of patents and trademarks as well as copyrights. SAPI has recently extended patent protection to certain varieties of genetically engineered crops in accordance with Andean Decision 486. SAPI is currently pursuing an ambitious program to modernize the organization's computer system. Nonetheless, neither SAPI nor COMANPI has been given sufficient resources to combat the full range of piracy activities in Venezuela.

Venezuela is a party to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. The World Trade Organization TRIPS Agreement became applicable for Venezuela on January 1, 2000.

Patents and Trademarks

Andean Community (CAN) Decisions 344 and 345, which took effect in 1994, and CAN Decision 486, which took effect in December 2000, are comprehensive laws that offer a significant improvement over the previous standards of protection for patents and trademarks provided by Venezuela's 1955 Industrial Property Law. Decision 344, for example, improves protection for famous trademarks, prohibits the coexistence of similar marks, and provides for the cancellation of trademark registrations based on "bad faith."

In September 2000, the Andean Community trade ministers approved Decision 486, which entered into force on December 1, 2000, and replaced Decision 344 as the Andean Community's Common Industrial Property Regime. Decision 486 is a notable improvement over Decision 344 in bringing the region's IPR regime closer to conformance with WTO standards. Nonetheless, U.S. companies are concerned that Decision 486 is not sufficiently explicit regarding the confidentiality of data included with marketing approval applications, thereby opening the way to the possible erosion of protections for such information. Also, Decision 486 contains ambiguities regarding the patentability of "second use" innovations. The Decision also remains to be fully implemented in Venezuela.

Despite the improvements Decision 486 made to the protection of intellectual property, problems remain in Venezuela's trademark regime. Current policy permits local pirates to produce and sell counterfeit products even after the genuine owners of those trademarks have undertaken legal proceedings against them. Court orders to cease-and-desist pirating activities are not issued until after a decision has been rendered, a process which can take years. Trademark counterfeiting is common in the clothing, toy, and sporting goods sectors. Despite these difficulties, Sysco Corporation and Reebok Shoes are U.S. companies that have successfully pursued litigation to protect the exclusive right to their trademarks in Venezuela.

Copyrights

Andean Community Decision 351 and Venezuela's 1993 Copyright Law are modern and

comprehensive and have substantially improved protection for copyrighted works in Venezuela. The Copyright Law extended protection to a wide range of creative works, including computer software, satellite signals, and cable television. However, despite aggressive and consistent enforcement action on the part of COMANPI, piracy of computer software and videos remains commonplace.

SERVICES BARRIERS

Venezuela maintains restrictions in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians and journalists) are reserved for those who meet Venezuelan certification requirements. In addition, only Venezuelan nationals may be licensed as architects, some (particularly government-related) accounting and auditing functions require citizenship, and only Venezuelan nationals may act as accountants for companies with public stock greater than 25 percent. Also, foreign professionals wishing to work in Venezuela must revalidate their title at a Venezuelan university on the condition of reciprocity. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law. A foreign firm also cannot use its international firm's name nor hire or form partnerships with Venezuelan lawyers.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms if they want a permanent presence or to practice with foreign employees. There is a law of tender which gives preferential treatment to Venezuelan companies if the company has the capabilities or if the project is financed by public funds. Foreign capital is restricted to a maximum of 19.9 percent in professional enterprises (Decree 2095). Eighty percent of a firm's personnel must be nationals.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. Finally, in any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films, a requirement that at least half of the television programming must be dedicated to national programs, and a requirement that at least half of the FM radio broadcasting be dedicated to Venezuelan music.

Basic Telecommunications Services

As part of the 1997 WTO Basic Telecommunications Agreement, Venezuela committed itself to offering market access and national treatment to telephony services. Venezuela passed the Telecommunications Act in June 2000, which ended the monopoly previously granted to the privatized national telephone company (CANTV). By the close of 2000, public auctions had been held which allowed foreign companies to provide wireless telephone services throughout the country, and plans were well under way to auction additional portions of the frequency spectrum for Local Multipoint Distribution System (LMDS) and "third generation" telecommunications technology. U.S. telecommunications companies are active participants in these auctions, and have been awarded several significant frequency bands.

Financial Services

By signing the 1997 WTO Financial Services Agreement, Venezuela made a commitment to liberalize markets in banking, foreign exchange, capital markets, life insurance, reinsurance and brokerage activities. Venezuela did not make a commitment on pensions, or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process. Local insurers must insure imports that receive government-approved tariff reductions or government financing.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals, and much of the mining and aluminum industries. Venezuela had begun an ambitious program of privatization under the Caldera administration, but over the past two years the pace of privatization has slowed. Despite the slowdown, efforts to attract foreign capital continue in the mining sector and segments of the electrical power generating industry. For example, in early 2000, the U.S. power generating company, AES Corporation, successfully took control of La Electricidad de Caracas (EDC), the local electrical company that provides power to the Caracas metropolitan area. Also, in August 1998, the U.S. firm, CMS Corporation, bought a controlling interest in Sistema Electrico de Nueva Esparta (SENECA), the principal power provider on Margarita Island.

Foreign investment continues to be restricted in the petroleum sector. The new constitution reserves ownership of the state oil company (PDVSA) to the Venezuelan Government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors. In the early 1990's, the Venezuelan Government created an "oil sector opening" to promote new petrochemical joint ventures and to bring inactive fields back into production. Almost 60 foreign companies representing 14 different countries participated in this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The government also passed legislation in 1998 aimed at introducing domestic and foreign competition into the domestic gasoline market. The new law allows foreign and

non-governmental Venezuelan investors to own and operate service stations, though the government retains the right to set gas prices. Venezuela also attempted to introduce competition in the natural gas sector by allowing domestic and foreign private sector companies to process, store, transport, distribute and market methane and ethane. Implementing regulations, however, have yet to be drawn up and, consequently, actual investment has been delayed.

A range of other natural resources - including iron ore, coal, bauxite, gold, nickel and diamonds - are gradually being opened to greater private investment. In 1996, CVG, the state-owned mining firm, announced its first joint venture with a foreign company to develop the Las Cristinas gold mine. President Chavez personally announced the beginning of operations in May 1999. Low gold prices, however, have forced CVG and its partners to put the project on hold. In April 1999, the Venezuelan Executive passed legislation that updated the 1945 Mining Law in order to encourage greater private sector participation in mineral extraction. As with the natural gas sector, however, implementing regulations have not yet been promulgated. Finally, Venezuela has vast hydroelectric resources that it has developed to power the nation's industries. In 1999, the country passed a national electricity law to provide a legal framework designed to encourage private investment in this sector.

Under the Andean Community Common Automotive Policy, Venezuela, Colombia and Ecuador impose local content requirements in order to qualify for reduced duties on imports. The local content requirement for passenger vehicles was 32 percent in 1997. It was raised to 33 percent for 1998, and was then lowered to 24 percent for 2000. Under the WTO Agreement on Trade Related Investment Measures (TRIMS Agreement), the three countries were obligated to eliminate local content requirements by the year 2000. However, in December 1999, the Andean Automotive Policy Council determined that it would not eliminate the local content requirement as it had initially indicated, but instead decided to increase it gradually to 34 percent by the year 2009. This automotive policy may be inconsistent with Venezuela's WTO obligations under the TRIMS Agreement.